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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,512	01/27/2005	Baltasar Ruiz-Roso Calvo De Mora	02/102 NUT	3451
7590	11/08/2007	Klaus Schweitzer ProPat 425 C South Sharon Amity Road Charlotte, NC 28211	EXAMINER PRATT, HELEN F	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 11/08/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/522,512	RUIZ-ROSO CALVO DE MORA ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Helen F. Pratt	1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 January 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-23 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

Claims 1- 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is indefinite in the use of the phrase "denatured carob flour". It is not known what is meant by this phrase.

Claim 11 is indefinite in step "c" in that there is no antecedent basis for "kibbled". Step d is indefinite in that it is not known what is "tasted", nor as in steps e, and f., and h, what is extracted with what and what is separated. It is not known in step j. what is classifying or what the end product is, i. e. classified to have what? Also, no parenthesis should be in the claims as they are confusing to the printer.

In claim 11(i), it is not known what "below 8%" means as in 8% humidity, etc.

No basis is seen as in claim 12 for "carob pod".

It is not known in claim 13 what part of the process the "temperature" refers to.

No antecedent basis is seen in claim 17, line 2, for "water". No parenthesis should be around "(wt./wt.)". No antecedent basis is seen in claim 19 for " 90% of particles".

### ***Claim Objections***

Claim 8 is objected to because of the following informalities: on line 2 'tannions' should be "tannins". Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marco et al. (5,856,313) in view of Wursch (5,043,160) and Page et al. (4,617,188).

Marco et al. disclose a process of making a natural carob fiber, which contains the same ingredients as in claim 1, except in different proportions for lignin and tannins (abstract and col. 2, lines 1-70, col. 3, lines 1-65). Claim 1 further differs from the reference in that the amounts of tannins are different and in claim 11 in toasting the carob pulp to from 130-200 C. before the pulp is extracted as in step e. However, the reference discloses that the carob fiber is dried at temperatures of from 120 plus or minus 10 degrees C. (col. 3, lines 26-34). Wursch discloses that it is known to roast carob flour (col. 1, lines 50-55). He also discloses as to the composition as in claim 1 that tannins are in the carob powder in amounts of 36.2%, and fiber in amounts of 34%. Carbohydrates are disclosed as being in various amounts in examples 1-3, due to the amount of washing the crushed carob pods have been subjected to, which removes the sugars from the carob pods. Page et al. disclose that it is known to roast carob pods, to various degrees of from 300 to 600 F. for 5 to 15 minutes (col. 2, lines 54-70) before grinding into a powder, and that the higher the roasting temperature the

shorter the roasting times. Tannin and fiber are shown in particularly by the reference. Nothing is seen that the other ingredients such as cyclitols are not present since the process of roasting carob flour is known. Therefore, it would have been obvious to roast or toast to within the claimed degrees as shown by Page et al. in the process of Marco et al. and to make a product containing the claimed amounts of tannin and fiber as shown by Wursch.

Claim 12 is to carob pods, which are shredded into 3 cm pieces and claim 13 in which the temperature is from 140-150 C, and claim 14 in which the time for roasting is from 5-60 minutes or from 10-20 minutes as in claim 15, and claim 16 where the extraction is done at a temperature of from 5-80 C and claim 17 where the ratio of pulp to water is from 1:20 wt/wt and claim 18 is to extracting for from 5-24 hours. However, nothing new is seen in particular variations of claim 11 absent anything new or unobvious.

Claim 19 further requires 90% of particles are below 150 microns. The reference to Marco discloses the use of mesh sizes from 50-250 of which 150 microns is between the disclosed range.

Claim 20 further requires repeating process steps. However, it would have been within the skill of the ordinary worker to repeat known processing steps particularly if one is extracting with water, in order to remove the solubles.

Claim 21 further requires drying at 140 C and below. Marco discloses drying at 120 C (col. 3, lines 30-35).

Nothing is seen that the process of Marco et al. is not continuous as in claim 22.

Claim 23 further requires that the flour be used in various ways. Marco et al. disclose that the fiber can be used in dietetic and food applications (col. 6, lines 11-28). Therefore, it would have been obvious to use the fiber made by the composition of claim 1 as shown by the combined references.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Page et al.

The limitations of claims 2-10 are found in the ranges of claim 1 and nothing is seen in amounts within the claimed ranges absent anything new or unobvious. Page et al. in particular, disclose the limitations of claim 1 since the carob flour has been roasted, and roasting generally cooks or denatures ingredients (col. 2, lines 53-64). Claim 1 differs in the particular amounts of the claimed ingredients. However, nothing is seen at this time that the ingredients are not within the claimed amounts since the carob flour has been denatured. Therefore, it would have been obvious to make a denatured carob flour as shown by Page et al.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wursch.

Wursch discloses a carob composition as in claim 1 from which the sugars have been extracted. The tannins have not been denatured, which does not mean that the carob flour itself has not been denatured since it is treated at a temperature of up to 100 C., and 100 C is known as boiling which would have produced a denatured flour (abstract and col. 1, lines 50-70, col. 2, lines 1-2).

The fibers, tannins and proteins are within the claimed range as in claim 1-10 as in examples 1-3 depending on the particular process of the example. Other materials such as cyclitols, lignins, celluloses, hemicelluloses and pectins are seen to be in the composition since they are not water -soluble or if some are soluble, it would have been within the skill of the ordinary worker to treat with water long enough to maintain the required ingredients. Lignins, celluloses, hemicelluloses and pectins are known to be fibers. The tannins are seen to be condensed (col. 2, lines 29-45). The sugar content can be in various amounts depending upon the degree of extraction of the sugars. Ex. 1-3 show various degrees of extraction of the soluble carbohydrates (sugars). As it is known to extract soluble carbohydrates such as sugars, it would have been within the skill of the ordinary worker to extract to particular degrees. The lignins, celluloses and hemicelluloses and pectins as in claims 4-7 are within the claimed ranges (Ex. 2—3). The tannins are within the claimed amounts as in claims 1, and 8 as is the protein as in claim 9.

Nothing is seen that the water content is not less than 6% as in claim 10 since the composition is to a flour, which generally has a small moisture content. Therefore, it would have been obvious to make a product as claimed as shown by the reference to Wursch.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Keith Hendricks, can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 11-7-07

  
HELEN PRATT  
PRIMARY EXAMINER